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December 17, 2012

VIA ECF

The Honorable Steven E. Rau
Magistrate Judge, District of Minnesota
United States District Court
334 Warren E. Burger Federal Courthouse
316 N. Robert Street
St. Paul, MN 55101

Re: *Barbe Puro v. New England Compounding Pharmacy, Inc.*
Case No. 12-cv-02605 (DWF/SER)

Dear Magistrate Rau:

On behalf of defendant New England Compounding Pharmacy ("NECC"), we write to request that the Rule 16 conference scheduled for January 9, 2012, be adjourned until mid-February 2013, following the Judicial Panel on Multi-District Litigation hearing on January 31, 2013.

This action, one of many federal court actions in numerous district courts pending against NECC, alleges that Plaintiff Barbe Puro has suffered personal injuries after being exposed to methylprednisolone acetate compounded and distributed by NECC. Interestingly, plaintiff's complaint does not allege that she developed fungal meningitis, the signature injury that most plaintiffs claim. Currently, there are at least 106 cases pending in 14 federal courts across the country, as well as almost 300 claims, involving the allegedly tainted pharmaceutical compound. NECC anticipates that hundreds more such cases will be filed in the coming months.

On October 16, 2012, plaintiffs in the Michigan action *Bansale v. New England Compounding Pharmacy, Inc.*, Case No. 12-cv-14559 (E.D. Mich. filed Oct. 15, 2012), filed a Motion for Transfer and Consolidation of Related Cases (the "MDL Motion") with the Judicial Panel on Multidistrict Litigation (the "Panel"). NECC favors MDL coordination, and no opposition has been filed by any party to a MDL coordination. On December 13, 2012, the Panel agreed to hear the MDL Motion on January 31, 2013. (J.P.M.L. Case No. 857, ECF No. 9103.)

While the Panel considers the MDL Motion, Defendant has filed a motion in this case before Judge Frank to stay all proceedings in this action, including all pretrial discovery and future motion practice, pending the Panel's adjudication of the MDL Motion. (ECF Nos. 12-14). A hearing is scheduled on the stay motion for February 15, 2012. (ECF No. 13).

For the same reasons that Defendant seeks a stay, Defendant asks that the Rule 16 conference be delayed, including any obligation to file a Rule 26(f) report and any right of the parties to serve or proceed with discovery until Judge Frank has an opportunity to review the pending

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motion. For this Court to advance proceedings in the instant matter would work at cross-purposes with that of the Panel as it considers whether to consolidate and transfer the cases. Indeed, because the instant action involves virtually identical predicate factual allegations, common questions of law and fact and overlapping claims for relief, continuing proceedings before the Panel adjudicates the pending motion would needlessly waste this Court's limited time and resources, as well as that of the parties hereto. Further, it would also alter the underlying circumstances the Panel must consider in adjudicating the MDL Motion. To promote judicial economy and avoid prejudice to any party, and to allow the MDL Motion to be ruled upon without any change in circumstances, the Defendant respectfully requests a stay pending the Panel's determination.

Plaintiff objects to this request to adjourn the scheduling conference and insisted that this request be submitted in writing so that counsel could respond.

Given that the parties are obligated to file their Rule 26(f) Report 21 days in advance of the January 9, 2012 Rule 16 conference (due date of December 19, 2012), Defendants would appreciate a timely response to this request. Defendants are further available for a conference call to discuss this issue if the Court deems appropriate.

Sincerely,

BOWMAN AND BROOKE LLP


Alana K. Bassin
Partner



AKB/mjg